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6 UNITED STATES DISTRICT COURT
7 WESTERN DISTRICT OF WASHINGTON
8 AT TACOMA

9 MARJORIE L. MCCREARY,

10 Plaintiff,

11 vs.

12 MICHAEL J. ASTRUE,
Commissioner of Social Security,

13 Defendant.

CASE NO. C09-5284 FDB

ORDER GRANTING
COSTS AND ATTORNEY FEES

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15 This matter comes before the Court on Plaintiff's motion for an award of attorney's fees
16 and costs pursuant to the Equal Access to Justice Act, 28 U.S.C. § 2412. Plaintiff seeks an
17 award of \$3,837.60 in attorney fees and \$350.00 in court costs. The Defendant has filed a
18 response stating the Commissioner has no objection to the requested fees and expenses.

19 The Ninth Circuit has established that the Equal Access to Justice Act (EAJA) applies in
20 social security cases. Wolverton v. Heckler, 726 F.2d 580 (9th Cir. 1984).

21 The EAJA provides in pertinent part:

22 Except as otherwise specifically provided by statute, a court shall award to a
23 prevailing party other than the United States fees and other expenses ... incurred
24 by that party in any civil action ... brought by or against the United States in any
court having jurisdiction over that action, unless the court finds that the position
of the United States was substantially justified or that special circumstances make
an award unjust.

25 A party can be found to prevail when there is a "material alteration of the legal
26 relationships of the parties," and the material alteration is "judicially sanctioned." Carbonell v.
27 INS, 429 F.3d 894, 898 (9th Cir. 2005). A material alteration of the legal relationships of the
28 parties occurs when one of the parties is required to do something directly benefitting the other

1 party that they would not otherwise have had to do. Id. at 900. A party need not succeed on
2 every claim in order to prevail. Rather, a plaintiff prevails if he has succeeded on any significant
3 issue in litigation which achieved some of the benefit sought in bringing suit. Id., nt. 5. A
4 litigant prevails for purposes of awarding EAJA fees without a judicial judgement as long as the
5 action has sufficient "judicial imprimatur." Id. at 899.

6 The Supreme Court has defined the term "substantially justified" as "justified in
7 substance or in the main-that is, justified to a degree that could satisfy a reasonable person."
8 Pierce v. Underwood, 487 U.S. 552, 565 (1988). To be substantially justified, the government
9 must have "a reasonable basis both in fact and in law." Id. at 568. The Ninth Circuit has held
10 that the government must be substantially justified during both the underlying agency action and
11 the litigation itself. Al- Harbi v. INS, 284 F.3d 1080, 1084-85 (9th Cir. 2002). Thus, the
12 government must meet this threshold twice - once with regard to the underlying agency action,
13 and then with regard to its litigation position in the proceedings arising from that action. See
14 Kali v. Bowen, 854 F.2d 329, 332 (9th Cir. 1988).

15 The party seeking fees must submit "an itemized statement ... stating the actual time
16 expended and the rate at which fees and other expenses were computed." 28 U.S.C. §
17 2412(d)(1)(B). The appropriate number of hours includes all time "reasonably expended in
18 pursuit of the ultimate result achieved." Hensley v. Eckerhart, 461 U.S. 424, 431 (1983).
19 However, "excessive, redundant, or otherwise unnecessary" hours should be excluded from the
20 fee award. Id. at 434. Although the fee applicant bears the burden of documenting the
21 appropriate hours expended, "the party opposing the fee application has a burden of rebuttal that
22 requires submission of evidence to the district court challenging the accuracy and reasonableness
23 of the hours charged or the facts asserted by the prevailing party in its submitted affidavits."
24 Gates v. Deukmejian, 987 F.2d 1392, 1397-98 (9th Cir. 1993).

25 By Order dated January 26, 2010, this action was reversed and remanded to the Social
26 Security Administration for further administrative proceedings. The Order is fully favorable to
27 Plaintiff and materially advances his position. The Defendant's position was not substantially
28 justified as defined by the EAJA, and that there are no special circumstances that would make an

1 award in this case unjust. Counsel for Plaintiff has filed his affidavit seeking attorney fees
2 totaling \$3,837.60 based upon an expenditure of 23.4 hours of attorney's time and \$350.00 in
3 court costs to maintain this action. The government has filed a response stating it has no
4 objection to this request. The Court finds the requested fees and expenses to resolve this matter
5 to be reasonable. Plaintiff has provided sufficient itemized statements of how the time was
6 distributed.

7 ACCORDINGLY,

8 IT IS ORDERED:

9 Plaintiff's petition for an award of costs and attorney's fees [Dkt # 19] is **GRANTED**.
10 Costs in the amount of \$350.00 and attorney's fees in the amount of \$3,837.60 are awarded to
11 Plaintiff.

12 DATED this 24th day of February, 2010.

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17 FRANKLIN D. BURGESS
18 UNITED STATES DISTRICT JUDGE
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